

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**DAVID DREXLER,**

**Plaintiff,**

**v.**

**Case No. 05-C-1051**

**LANGLADE COUNTY SHERIFF'S,  
DEPARTMENT and JOHN MICHAEL SCHUNKE,**

**Defendants.**

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**ORDER**

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The pro se plaintiff, David Drexler ("Drexler"), filed this civil rights action on October 4, 2005, pursuant to 42 U.S.C. § 1983. By order of November 9, 2006, Judge William C. Griesbach granted the plaintiff's request for leave to proceed in forma pauperis on his claim that he was brutalized by Officer John Schunke during or after a sentencing hearing in 2004. Subsequently, the parties consented to United States magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c) and General Local Rule 73.1 (E.D. Wis) and the matter was reassigned to this court.

On June 15, 2006, the defendants moved for summary judgment. On August 28, 2006 this court denied without prejudice the defendant's motion on the basis that it failed to comply with Civil Local Rule 56.1. The defendants were given 14 days to comply with Civil L.R. 56.1 and the plaintiff was then permitted 30 days in which to respond. The defendants complied with Civil L.R. 56.1 and rather than responding, the plaintiff filed on October 2, 2006 a motion to dismiss.

Although the plaintiff apparently seeks to unilaterally dismiss his action, because the defendants have filed an answer, leave of the court is required for dismissal. Fed. R. Civ. P. 41(a).

The plaintiff's motion, in its entirety, states, "I David Drexler, Dismiss without Prejudice case# 05-C-1051. On 9-25-06."

The court notes that Drexler has previously voluntarily dismissed this action. Also, given the context in which the plaintiff filed his motion to dismiss, in response to the defendants' motion for summary judgment, the court does not believe dismissal without prejudice is appropriate.

Therefore, the court shall withhold its decision on the plaintiff's motion to dismiss for **30 days**, until **Monday, November 6, 2006**. The plaintiff may respond to the defendants' motion for summary judgment by this deadline or if the plaintiff fails to respond, the court shall grant the plaintiff's motion to dismiss, but the dismissal will be with prejudice.

**SO ORDERED.**

Dated at Milwaukee, Wisconsin, this 6th day of October, 2006.

s/AARON E. GOODSTEIN  
United States Magistrate Judge